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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,302	06/06/2003	Brian J. Schimmoller	P-122152.01 (UTI)	5876

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EXAMINER

RAEVIS, ROBERT R

ART UNIT PAPER NUMBER

2856

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/601,302

Applicant(s)

SCHIMMOLLER ET AL.

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 6, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1,2,5,13,3,4,7-12,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sainsbury in view of Kataoka.

Sainsbury teaches (Figure 6) a device, including: a “aerodynamic” (col. 3, line 11) shaped device 22 that includes a mesh bag 67.

Sainsbury does not state what the bag is constructed of.

As to claims 1,2,5,3,7,8,9,11, it would have been obvious to utilize Kataoka’s bag (col. 3, lines 25-30) for Sainsbury’s bag because Kataoka teaches that a mesh bag may be constructed of absorbant material when “strength” (col. 3, line 20) is required, as is required in Sainsbury’s (“strong” on col. 6, line 30) bag. No weight was given to intended usage in this apparatus claim.

As to claims 13,4,12, it would have been obvious to employ any strong material for Sainsbury housing, as the reference is silent as to any particular material.

As to claim 10, frame 60 diameter and/or length is from 1 to 12 inches.

As to claim 16, the line 23 must be connected to the plain via a secure element, suggestive of a bracket.

Claims 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Turman.

Turman teaches a method to sample air, including: providing an “aerodynamic” (col. 2, line 40) housing 11; providing an “aircraft” (col. 2, line 37); attaching the housing

to the aircraft; and moving the aircraft through the air. The "aerodynamic" configuration allows for permitting a level of control of aircraft direction.

Claims 1,2,5,13,3,4,7,8,9,10,11,12,16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turman in view of Kataoka, and further in view of Sainsbury.

Turman teaches every limitation of claim 1, but does not state what the material of construction of filter 80 is.

As to claims 1,2,5,3,7,8,9, it would have been obvious to employ Kataoka's material (col. 3, lines 20-35) as a filter because Sainsbury teaches that a bag material may be employed to collect samples via aircraft usage.

As to claims 13,4,12, it would have been obvious to employ any strong material for Turman's housing as the reference is silent as to any particular material.

As to claims 10,11, compare the scale of Sainsbury's sampler with Turman, suggestive of the same relative sizes.

As to claim 16, note Turman's bracket 100.

Claims 1,2,13, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sainsbury in view of Kataoka.

Sainsbury teach a sampler, including: frame including top and bottom surfaces 58 (i.e. fins) and body 50, the innermost portion of the body occupy a space interior to the external surface of the frame. The body of which is constructed of an "alloy" (col. 5,

line 7) (i.e. composite). A bag 67 engages the frame, and the assembly is connected to a rope 23 to provide a means for propelling the frame through the air.

The material of construction of the bag is not identified.

As to claim 21, it would have been obvious to utilize Kataoka's bag (col. 3, lines 25-30) for Sainsbury's bag because Kataoka teaches that a mesh bag may be constructed of absorbant material when "strength" (col. 3, line 20) is required, as is required in Sainsbury's ("strong" on col. 6, line 30) bag. No weight was given to intended usage in this apparatus claim.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Definition from dictionary.

Claims 6,14,15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

As to Applicant's **REMARKS**, please consider the following:

As to p. 5, an airfoil is an aircraft part or surface that controls stability. Thus, Sainsbury shaped device (which even includes wings) is an airfoil. Even Turman's aeordyanimic shaped body controls aircraft, especially in comparison to body that would have been rectangularly blocked shaped, and would thus have inhibited control. In addition, the claims are directed to devices, and it is the combination of structural limitations that the device is limited to. In that light, Kataoka's bag is "capable of of absorbing particulate matter in an airstream" (last two lines of claim 1) as claimed. The phrase "for sampling air" (line 1 of claim 1) is a statement of intended use.

As to p. 6, first paragraph; the claims do not call "for analysis" (line 11) as argued.

As to p. 6, second paragraph; the claims are not so limited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raevis whose telephone number is 571-272-2204. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. Supervisor Hezron William's phone is 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Rowe*  
*RAEVI*